

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID BOOKER,

Plaintiff

Case No. 2:23-cv-00469-ART-DJA

ORDER

v.

HIGH DESERT STATE PRISON, et al.,

Defendants

I. DISCUSSION

On April 4, 2023, this Court granted Plaintiff until June 5, 2023, to either pay the full \$402 filing fee for a civil action or file a fully complete application to proceed *in forma pauperis* with all three required documents. (ECF No. 3). In response, Plaintiff filed an incomplete application to proceed *in forma pauperis* (ECF No. 4), a motion for appointment of counsel (ECF No. 8), a motion/affidavit to amend (ECF No. 9), a petition for writ of mandamus (ECF No. 10), a motion to extend time to file an application to proceed *in forma pauperis* (ECF No. 11), and a motion to amend complaint (ECF No. 12). The Court addresses the motions involving the filing fee (ECF Nos. 4, 9, 10, 11) and the remaining motions (ECF Nos. 8, 12).

A. Filing Fee Motions

Plaintiff has filed multiple motions that take issue with the \$402 filing fee. In his handwritten “application to proceed *in forma pauperis*,” Plaintiff believes it unjust that he should have to pay a large filing fee to protect his civil rights. (See ECF No. 4). In his motion/affidavit to amend, Plaintiff asserts that the Court “mocks” his rights with the \$402 filing fee. (ECF No. 9 at 2). In the petition for writ of mandamus citing the Nevada Revised Statutes, he asserts that the \$402 is a “slave’s fee.” (ECF No. 10 at 3). Finally, Plaintiff requests an extension of time to acquire the documents needed to file a fully complete application to proceed *in forma pauperis*. (ECF No. 11).

To the extent that Plaintiff’s handwritten “application to proceed *in forma pauperis*”

1 which argues against the \$402 fee is an *in forma pauperis* application, the Court denies
 2 the application without prejudice as incomplete. The Court denies the other motions
 3 arguing about the \$402 filing fee. (ECF Nos. 9, 10). The \$350 filing fee and \$52
 4 administrative fee, for a total of \$402, is a national filing fee set by Congress and the
 5 Judicial Conference of the United States. See 28 U.S.C. § 1914.

6 The Court will, however, grant Plaintiff an extension of time to file a fully complete
 7 application to proceed *in forma pauperis*. (ECF No. 11). For an inmate to apply for *in*
 8 *forma pauperis* status, the inmate must submit all three of the following documents to the
 9 Court: (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, which is
 10 pages 1–3 of the Court’s approved form, that is properly signed by the inmate twice on
 11 page 3; (2) a completed **Financial Certificate**, which is page 4 of the Court’s approved
 12 form, that is properly signed by both the inmate and a prison or jail official; and (3) a copy
 13 of the **inmate’s prison or jail trust fund account** statement for the previous six-month
 14 period. See 28 U.S.C. § 1915(a)(1)–(2); Nev. Loc. Special R. 1-2. *In forma pauperis* status
 15 does not relieve an inmate of his or her obligation to pay the filing fee, it just means that
 16 the inmate can pay the fee in installments. The Court gives Plaintiff **until July 28, 2023**,
 17 to either pay the filing fee or submit an application to proceed *in forma pauperis*.

18 **B. Remaining Motions**

19 Plaintiff has filed a motion for appointment of counsel based on having to pay the
 20 filing fee. (ECF No. 8). A litigant does not have a constitutional right to appointed counsel
 21 in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th
 22 Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to
 23 represent any person unable to afford counsel.” However, the court will appoint counsel
 24 for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d
 25 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional
 26 circumstances’ exist, a court must consider ‘the likelihood of success on the merits as
 27 well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity
 28 of the legal issues involved.” *Id.* “Neither of these considerations is dispositive and

1 instead must be viewed together.” *Id.* In the instant case, the Court does not find
2 exceptional circumstances that warrant the appointment of counsel. The Court denies
3 the motion for appointment of counsel without prejudice.

4 Plaintiff seeks to file an amended complaint combining the complaint in this case
5 with the complaints filed in his two other federal cases in order to pay only one filing fee.
6 (ECF No. 12). The Court denies the motion without prejudice. The Court will send Plaintiff
7 a copy of the District of Nevada’s General Order 2021-05. Plaintiff should review this
8 order and determine whether combining his complaints would comply with the Federal
9 Rules of Civil Procedure.

10 **II. CONCLUSION**

11 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No.
12 4) is denied without prejudice as incomplete.

13 It is further ordered that the motions taking issue with the filing fee (ECF Nos. 9,
14 10) are denied.

15 It is further ordered that the motion for extension of time to file an application to
16 proceed *in forma pauperis* (ECF No. 11) is granted. Plaintiff has **until July 28, 2023**, to
17 either pay the full \$402 filing fee or file a fully complete application to proceed *in forma*
18 *pauperis* with all three required documents: (1) a completed application with the inmate’s
19 two signatures on page 3, (2) a completed financial certificate that is signed both by the
20 inmate and the prison or jail official, and (3) a copy of the inmate’s trust fund account
21 statement for the previous six-month period.

22 It is further ordered that the motion for appointment of counsel (ECF No. 8) is
23 denied without prejudice.

24 It is further ordered that the motion to amend (ECF No. 12) is denied without
25 prejudice.

26 Plaintiff is cautioned that this action will be subject to dismissal without prejudice if
27 Plaintiff fails to timely comply with this order. A dismissal without prejudice allows Plaintiff
28 to refile the case with the Court, under a new case number, when Plaintiff can file a

1 complete application to proceed *in forma pauperis* or pay the required filing fee.

2 The Clerk of the Court is directed to send Plaintiff the approved form application to
3 proceed *in forma pauperis* for an inmate and instructions, the approved form for filing a
4 § 1983 complaint and instructions, and a copy of the District of Nevada's General Order
5 2021-05.

6
7 DATED THIS 7th day of June 2023.

A handwritten signature in blue ink, appearing to read 'D. Albregts', is written over a horizontal line.

9 DANIEL J. ALBREGTS
10 UNITED STATES MAGISTRATE JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28